

**DEQ – Air Quality Division
SUMMARY OF NEGOTIATED RULEMAKING
DAIRY PERMITTING RULEMAKING
DOCKET No. 58-0101-0502
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(Amended)**

PARTICIPANTS

Bauer, Martin – DEQ
Bilderback, Idaho State Department of Agriculture (ISDA)
Cline, Debra – DEQ (recorder)
Haynes, Claudia - Canyon County
Kronberg, Lisa – Attorney General's Office
Louks, Bruce – DEQ
McClure, Ken – Givens Pursley
McLean, Lauren – Idaho Conservation League
Naerebout, Bob – Idaho Dairymen's Association
Olmstead, Brent – Milk Producers of Idaho
Patten, Marv – ISDA
Simon, Mike – DEQ

Martin Bauer called the meeting to order at 9:10 a.m., and the participants introduced themselves.

FINAL REVIEW OF BMPs – COMPLIANCE METHODS

Martin Bauer noted the discussion on all BMPs has been incorporated into one document and distributed to participants.

■ Incorporation of Manure within 24 or 48 hours – Compliance Method

Ken McClure reported he briefly discussed this issue with the dairymen to get their comments on compliance methods. Their main concern is to avoid unnecessary record keeping.

Martin Bauer thought determining compliance with this BMP would be a problem because it offers 10 points if the manure is incorporated within 24 hours and 5 points if it is done within 48 hours, and it will be very difficult to determine when the manure was applied with just a 24-hour difference.

Mr. McClure noted another problem was the amount of time it can take to apply the manure before it is incorporated. When does the 24-hour time limit begin – when the application is complete, or when it begins? It could take up to two days just to spread the manure. It can take much longer to apply and spread the manure than it does to disc it under. Mr. Bauer pointed out the intent of the BMP was to have the manure plowed under as soon as possible to limit ammonia emissions. He believed the BMP

was written to require the 24-hour timeframe begin when application of manure starts until when it is disked under.

Lauren McLean pointed out that if it takes several days before the manure is incorporated, the value of the BMP is lost because the ammonia is volatilizing during that time.

Marv Patten stated he was comfortable with being able to determine compliance with both the 24- and 48-hour timeframes with a visual inspection.

After discussion of the difficulty of judging compliance, it was agreed this is a valuable BMP that should be retained. The wording will be revised to clarify the clock starts when the application of the manure begins.

Lisa Kronberg asked if some record could be used to demonstrate compliance. Ken McClure reiterated his concern that a record keeping process not be created solely for compliance purposes. If there are other records already being maintained that can be used for the purpose of compliance, that is fine. The concern is that a dairy could be penalized for not maintaining the record, even though it had complied with the BMP. Marv Patten discussed other ways compliance could be determined such as records from commercial haulers and Nutrient Management Plan records.

Lisa Kronberg agreed it was best if the compliance could be documented through other ongoing processes. Brent Olmstead asked if a work schedule showing what days manure is applied and incorporated with a check-off or initial when it is completed would satisfy the concern. Martin Bauer thought such a work schedule coupled with the information from the Nutrient Management Plan records showing the number of loads and the day applied would be sufficient documentation for compliance. Ken McClure and Brent Olmstead will check with the dairymen to see if this would be an acceptable process.

Marv Patten suggested a new BMP for daily production soil injection of slurry. He felt manure incorporation done on a daily basis as produced would be the best possible method and felt it was important to have a BMP to provide an incentive and encouragement for this method. There are dairies that are already doing this. He noted this would be limited to certain times when crops and weather allowed.

Martin Bauer said a new BMP would be added for "Direct daily incorporation of effluent or slurry." This BMP will differ from soil injection in that it would be incorporated daily as opposed to allowing it to collect in an area first. Bruce Louks will work with Ron Sheffield to determine how the BMP compares with the others and assign a point value.

■ Solid Separation – Compliance Method

Martin Bauer reviewed the extensive discussion on the matter at previous rulemaking meetings. The remaining question is how to determine whether the system is being

cleaned out on a monthly basis. After discussing the different processes and all the variables, it was agreed the compliance method would be a one-time plan or explanation of the system used by the facility and how it is cleaned out. The facility will maintain a deviation log showing any time they have not complied with their plan. ISDA may authorize site-specific deviations if an onsite evaluation justifies it or it makes good agronomic sense.

■ Composting – Compliance Method

Martin Bauer reviewed previous discussions on composting methods. One method, sometimes referred to as “Idaho composting,” is simply stacking and drying piles of manure in the corrals. It was agreed the compliance method for “Idaho composting” would be observation by inspector, and it would receive four points.

■ Direct Utilization of Collected Slurry and Direct Utilization of Collected Parlor Wastewater

Martin Bauer said the issue of what “direct” means in the definitions of these BMPs needs clarification. The group discussed the issue and generally thought the definition of “direct utilization” is that the slurry or wastewater is not sent to a wastewater or storage basin with the exception of the collection point where it is generated. Marv Patten clarified it was okay to have the slurry or wastewater separated before it goes to the collection area. It is a continuous process of being pumped in and pumped out.

The group discussed the need for an introduction to the BMP definitions that explains how the numbers were originally developed, what studies and best engineering judgments were used to determine the numbers, and how they were all scaled. John Bilderback commented he wanted some perspective given to the rule that it is not the final word because everything is not known at this time. Mr. Bauer agreed and said the rule will also contain a statement that as better information is developed and new BMPs are found, they will be added or rescaled as appropriate. Rule changes may be needed to change the numbers, but a statute change would not be required. The document will be drafted for the group’s review and discussion.

Martin Bauer suggested the following definition for direct utilization: direct utilization means parlor (or slurry) is not sent to a wastewater storage basin with the exception of the collection area; from the collection area, it is utilized. Marv Patten pointed out there are a myriad of systems and some of the collection areas are quite large and have several separator cells. It can take up to a month for the waste to process through the system. He recommended the definition be written to apply to smaller systems with mechanical separators that go into a pumped pond for application. The larger systems with separator cells will receive points under other BMPs. This would encourage the daily use land application. Bruce Louks added he did not believe it could be conceptually considered direct utilization if parlor wastewater went to a large collection pond with low turnover.

Ken McClure believed anytime the wastewater was being pumped out of a different collection pond, and not the large storage pond, it should be considered direct utilization. Lauren McLean pointed out that if the wastewater sits in the collection pond for 30 days, volatilization is occurring. Mr. McClure stressed the need to encourage the use of a smaller facility to pump out and apply wastewater, rather than the large storage pond where it could stay for up to 180 days.

Marv Patten questioned whether three different categories with different point values could be used to give credit and encourage the different systems. There are already points given for the 30-day retention separator cells. If a facility has an earthen gravity separator system and uses direct daily land application, it should be encouraged.

Ken McClure pointed out the application may take place outside the growing season as well, when the crop is off the field. Marv Patten noted there would be many anomalies, and judgment would be used during the inspection process. There may be times during the growing season when land application cannot take place due to weather. Mr. Bauer suggested the words, “and applied daily during the growing season as weather conditions allow” be added to the end of the definition.

Mr. Bauer questioned whether additional language was needed because the BMP list states (for parlor wastewater), “It is a growing season utilization of parlor wastewater. Points are equal for all categories because all three have the same amount of production coming out of the parlor and manure should for all practical purposes be separated and applied daily during the growing season. He felt this was a good definition of “direct.”

Mr. Bauer confirmed that as defined by the discussion, the definition would be: Direct utilization means parlor wastewater is not sent to a wastewater storage basin with the exception of the collection area; from the collection area, it is utilized and applied daily during the growing season as weather conditions allow. He noted that no additional points would be added for application outside of the growing season because the points are pro-rated. The definition will be the same for collected slurry.

Marv Patten thought the point value for direct utilization of parlor wastewater and the direct utilization of slurry should not be the same in freestall scrape because of the difference in volume. There is 85% product taken with collected slurry versus 15% with parlor wastewater. In a freestall scrape situation, 85% of the manure is deposited in the freestall and 15% of the manure is deposited in the parlor. The collected slurry from a freestall scrape may be worth more than 10 points. The parlor wastewater points would be the same regardless of the system used.

Bruce Louks will set up a conference call with Ron Sheffield and Marv Patten to discuss the point system for collected slurry and parlor wastewater from a freestall scrape.

■ Aerated Lagoon – Clarify Definition

The group discussed and agreed to the definition as revised at the last meeting and shown on Page 3 of the BMP definitions. The group felt the definition did not need further clarification and will read: "Biological treatment basin designed to decompose liquid manure and nitrify ammonia in the presence of oxygen. System has a pH of 7.0 to 8.0, and sludge is designed to be removed every five years. Systems should utilize submerged micro-bubble systems to reduce ammonia loss. If engineering guidelines are not specified by the designer, system should be operated to maintain a dissolved oxygen concentration greater than 1.5 mg/l and an oxygen-reduction-potential greater than 50. Quarterly monitoring of inflow and outflow nitrogen species is required to track system performance. Also effective in reducing volatile organic compounds, biological oxygen demand, and odor."

DISCUSS NEW BMPs

The group agreed this agenda item should be delayed until the next meeting when Ron Sheffield could be present to participate in the discussion. Bruce Louks will contact Mr. Sheffield to develop a draft for discussion at the next meeting.

THIRD PARTY EXPORT

■ Soil Injection Slurry and Other BMPs

The group discussed the intricacies of how points will be assigned for BMPs when the waste is shipped offsite. It was agreed the facility should get the points if the party has a contract with the person hauling off the waste to incorporate the BMP. The harder question was how to determine compliance. Marv Patten pointed out there is no authority to inspect for compliance at a third-party site. He suggested the dairyman could inspect for compliance with the contract. Lisa Kronberg agreed and thought the dairyman could certify the contractor was complying with the BMP.

Ken McClure said it would be acceptable if the contract was sufficient proof the third party was complying. He emphasized the dairyman should not be put in the role of enforcer.

Marv Patten observed there probably would be good compliance as there are benefits from direct injection that will provide incentive.

Lisa Kronberg thought a section should be added to the rule for parties that receive waste from dairies. Ken McClure felt such an action would make it impossible for dairies to get willing parties to apply offsite. Martin Bauer thought it would have to be handled on a case-by-case basis. Lisa Kronberg believed a contract would not provide an adequate level of enforcement, and could potentially just transfer a problem from the dairy to a different location. Mr. McClure reminded it would still be reducing ammonia emissions at the dairy. Claudia Haynes added that the concern was with ammonia being consolidated at one facility; when it is distributed to different areas, the cumulative effect is not the same. She strongly supported this BMP and urged the group to keep working to find a way to make it work. Ms. Kronberg stressed that if it is not

enforceable, it should not be put in the rules. Martin Bauer clarified it was not a matter of enforcement, but a practical way to determine compliance.

Marv Patten felt it was important to offer this opportunity to those willing to use some mechanism or documentation to show compliance. The documentation would vary depending on which BMP is used. Martin Bauer will work with Lisa Kronberg to develop some ideas and bring them back to the group for discussion at the next meeting.

FINALIZE RULE LANGUAGE

Martin Bauer recommended the following be added to the rule (from the BMP table) for informational purposes: the system, component, control effectiveness, and compliance method with footnotes. The use, cost, and other issues could be eliminated since these were for use during the rulemaking discussions. The group agreed to the recommendations.

Ken McClure questioned the need for the addition of the word “enforceable” to the last sentence of Section 762 of the rule. He felt the word was unnecessary because there was no difference between a permit and an “enforceable” permit. Martin Bauer explained the word was needed to clarify that if someone opts into the program when they are not required to, the permit is still enforceable. Lisa Kronberg will work with the language to reword the sentence and clarify the intent.

Mr. McClure asked if Section 763.01 requiring 15 days notice prior to commencing operation was necessary for existing dairies. Martin Bauer suggested the language be changed to “. . . prior to fifteen (15) days of triggering the thresholds listed in Section 761.

Mr. McClure asked how temporary or emergency situations involving an increased number of cows would be handled. Mr. Bauer will consult with Ms. Kronberg to see if language could be developed to allow flexibility and discretion in such situations.

The wording in Section 764.01 will be revised for clarification to read: “Each dairy farm subject to these sections, or that otherwise obtains a permit by rule under these sections, . . .” The last sentence of the section regarding the addition of new BMPs remains in question regarding the process and legality. The challenge is to be able to add valuable BMPs without the delay of having to go through the rulemaking process. Lisa Kronberg will continue to investigate the matter. She will also check on the best method to reference the DEQ website since the exact website address may change.

SCHEDULE FOR FUTURE MEETINGS

- The next negotiated rulemaking meeting was scheduled for December 12, 2005 from 1:00 p.m. – 4:00 p.m. at the DEQ state office in Boise.

The meeting adjourned at 11:45 a.m.

(Editor's Note: Following adjournment of the meeting, the December 12, 2005 meeting was cancelled and rescheduled for December 16, 2005, 9:00 a.m. – Noon at the DEQ state office in Boise.)